APPENDIX

Revenue Act of 1926, c. 27, 44 Stat. 9:

SEC. 302. The value of the gross estate of the decedent shall be determined by including the value at the time of his death of all property, real or personal, tangible or intangible, wherever situated—

* * * * *

(d) To the extent of any interest therein of which the decedent has at any time made a transfer, by trust or otherwise, where the enjoyment thereof was subject at the date of his death to any change through the exercise of a power, either by the decedent alone or in conjunction with any person, to alter, amend, or revoke, or where the decedent relinquished any such power in contemplation of his death, except in case of a bona fide sale for an adequate and full consideration in money or money's worth.

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(U. S. C., Title 26. Sec. 411.)

Revenue Act of 1934, c. 277, 48 Stat. 680:

SEC. 401. REVOCABLE TRUSTS.

Section 302 (d) of the Revenue Act of 1926 is amended to read as follows:

"(d) (1) To the extent of any interest therein of which the decedent has at any time made a transfer, by trust or otherwise, where the enjoyment thereof was subject at the date of his death to any change through the exercise of a power, either by the decedent alone or in conjunction with any per-

son, to alter, amend, or revoke, or where the decedent relinquished any such power in contemplation of his death, except in case of a bona fide sale for an adequate and full consideration in money or money's worth.

"(2) For the purposes of this subdivision the power to alter, amend, or revoke shall be considered to exist on the date of the decedent's death even though the exercise of the power is subject to a precedent giving of notice or even though the alteration, amendment, or revocation takes effect only on the expiration of a stated period after the exercise of the power, whether or not on or before the date of the decedent's death notice has been given or the power has been exercised. In such cases proper adjustment shall be made representing the interests which would have been excluded from the power if the decedent had lived, and for such purpose if the notice has not been given or the power has not been exercised on or before the date of his death, such notice shall be considered to have been given, or the power exercised, on the date of his death.

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(U. S. C., Title 26, Sec. 411.)

Revenue Act of 1936, c. 690, 49 Stat. 1648:

SEC. 805. ESTATE TAXES — REVOCABLE TRANSFERS.

(a) Section 302 (d) (1) of the Revenue Act of 1926, as amended, is amended to read as follows:

"(d) (1) To the extent of any interest therein of which the decedent has at any time made a transfer (except in case of a bona-fide sale for an adequate and full consideration in money or money's worth), by trust or otherwise, where the enjoyment

thereof was subject at the date of his death to any change through the exercise of a power (in whatever capacity exercisable) by the decedent alone or by the decedent in conjunction with any other person (without regard to when or from what source the decedent acquired such power), to alter, amend, revoke, or terminate, or where any such power is relinquished in contemplation of decedent's death."

(b) Except in the case of transfers made after the date of the enactment of this Act, no interest of the decedent of which he has made a transfer shall be included in the gross estate under such section 302 (d) (1) unless it was includible under such section before its amendment by this section.

Treasury Regulations 80, as amended by T. D. 4729 (1937–1 Cum. Bull. 286–287):

ART. 20. *Transfers with power to change the enjoyment.*—(*a*) *Transfers included.*—Subdivision (d) of section 302 of the Revenue Act of 1926, as amended, embraces a transfer by trust or otherwise (if not amounting to a bona fide sale for an adequate and full consideration in money or money's worth) when at the time of decedent's death the enjoyment of the transferred property, or some part thereof or interest therein, was subject to any change through a power exercisable either by the decedent alone, or by him in conjunction with some other person or persons, to alter, or amend, or revoke, or terminate.

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The third change made in the subdivision by the Revenue Act of 1936 consisted of the addition of the words "or terminate" following the words "to alter, amend, re-

voke." Such addition is considered but declaratory of the meaning of the subdivision prior to the amendment. A power to terminate capable of being so exercised as to revest in the decedent the ownership of the transferred property or an interest therein, or as otherwise to inure to his benefit or the benefit of his estate, is, to that extent, the equivalent of a power to "revoke," and when otherwise so exercisable as to effect a change in the enjoyment, is the equivalent of a power to "alter."

(*b*) *Taxability.*—The property or the interest or interests therein so transferred shall be included in the gross estate if coming within any one of the following paragraphs:

(1) Regardless of when the transfer was made, if the decedent died after the enactment of the Revenue Act of 1916 (September 8, 1916), and the power was reserved at the time of the transfer and was exercisable by the decedent alone or in conjunction with a person or persons having no substantial adverse interest or interests in the transferred property, or if exercisable in conjunction with a person having a substantial adverse interest or with several persons some or all of whom held such an adverse interest, then to the extent of any interest or interests held by a person or persons not required to join in the exercise of the power and any adverse interest which was not substantial.

(2) When the transfer was made after the enactment of the Revenue Act of 1924 (4.01 p. m., eastern standard time, June 2, 1924) and before the amendment of the subdivision by the Revenue Act of 1936 became effective (June 23, 1936), and the decedent's

death occurred at any time subsequent to the transfer, and the power was reserved at the time of the transfer and was exercisable by the decedent alone or in conjunction with a person or persons either having or not having a substantial adverse interest or interests in the transferred property, or in conjunction with persons one or more of whom had and one or more of whom had not such an adverse interest.

(3) When the transfer was made and the decedent died after June 22, 1936 (the date of the enactment of the Revenue Act of 1936), and the power was either reserved at the time of the transfer or later created or conferred, without regard to the source from which the power was acquired, and whether exercisable by the decedent alone or in conjunction with a person or persons either having or not having a substantial adverse interest or interests in the transferred property, or in conjunction with persons one or more of whom had and one or more of whom had not such an adverse interest.

* * * * *

The power to alter, amend, revoke, or terminate will be considered to have existed on the date of the decedent's death though the exercise of the power was subject to a precedent giving of notice, or though the alteration, amendment, revocation, or termination would take effect only on the expiration of a stated period after the exercise of the power, whether or not on or before the date of the decedent's death notice had been given or the power had been exercised, or though the exercise of the power was restricted to a particular time or the happening of a particular event which had not arrived or oc-

curred at decedent's death. When determining the value of the gross estate in such cases the full value of the property transferred subject to the power should be discounted for the period required to elapse between the date of decedent's death and the date upon which the alteration, amendment, revocation, or termination could take effect. (See article 13 (10).)

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